

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1108 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-  
and  
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No :

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NEW INDIA ASSURANCE CO.LTD.

Versus

HEIRS OF BANUBHAI MOHABATSINH JADEJA  
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Appearance:

MR RAJNI H MEHTA for Petitioner  
DELETED for Respondent No. 2  
Mr.PJ KANABAR for MR PM THAKKAR for Respondent No. 3  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA  
and  
MR.JUSTICE H.K.RATHOD

Date of decision: 27/06/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. This Appeal arises out of a common judgment rendered by the Motor Accident Claims Tribunal, Rajkot on 22.2.1985 deciding several claim petitions and rendering Awards in those claim petitions. The instant Appeal arises out of Claim Petition No.145 of 1983.

2. Brief facts giving rise to this Appeal shortly are as under :

An accident took place on 7.9.1982 at about 3.45 p.m. on Rajkot - Morbi State High-way near village Bedi. A Public Carrier No.GTX 8202 driven by the first opponent before the Tribunal with some inmates in it was moving on the road. While it was passing over the bridge near village Bedi it went off the road due to the fact that the driver lost control over it and the vehicle plunged into river bed by breaking the side railings of the bridge. The passer-by was also thrown off. Various persons sustained injuries and 7 of them died. Claim petitions were filed on behalf of legal representatives of the passengers travelling in the goods vehicle and also by the legal representatives of the passer-by who was thrown and died. It is said that in the instant case the passer-by was not a passenger in the vehicle. Injured claimants also filed several claim petitions. It was a case that the passengers in the vehicle were transporting their goods to their villages. The accident was alleged to have taken place due to rash and negligent driving of the vehicle by the driver.

3. The present Appellant Insurance Company resisted the claim petition denying rashness and negligence on the part of the driver. It was also pleaded that the inmates in the vehicle were passengers on payment of charges hence they are not entitled to any claim. It was further pleaded that the vehicle in question was used in violation of conditions of the Policy and permit hence also no claim can be sustained. The last plea was that the vehicle was not being driven by the driver hence also the Insurance Company is not liable to pay any compensation.

4. The Tribunal, after considering the entire evidence on record, found that the deceased was working in the Railway and was returning to Khorana from Rajkot on foot and while he was moving from the side of the bridge on the road, he was knocked down by the aforesaid vehicle. In order to strengthen this findings the

Tribunal relied upon the Statement of the driver where he accepted that the deceased was not the passenger and that he was a passer-by. The Tribunal also considered the contradiction in the statement of the driver before the Tribunal as well as before the Police in Criminal Case and after considering the entire material it was found by the Tribunal that the deceased was not a passenger in the vehicle.

5. We have heard Shri Rajni H. Mehta, learned Counsel for the appellant. The finding of fact recorded by the tribunal that the deceased was not a passenger in the vehicle to our mind is supported by evidence on record and this Court can not interfere with the said finding because it does not seem to be contrary to the evidence or perverse finding. The finding of fact can be interfered by the Appellate Court, but only in those cases where such finding has been recorded by the lower Court ignoring the material evidence or finding has been recorded by misreading the evidence. It is neither a case where there has been misreading of evidence by the Tribunal or the Tribunal has recorded the finding by ignoring the material evidence on record. Consequently, the finding of the tribunal that the deceased was not a passenger does not require any interference. If this is so then the verdict of the Apex Court in Smt. Mallava, etc. V/s. The Oriental Insurance Co. Ltd. & ors. reported in JT 1998 (8) SC 217 cannot be applied to the facts of the case before us.

6. Shri R.H.Mehta has rightly contended that he has no case regarding quantum of compensation awarded by the Tribunal and he can not argue on this point any further. As such no other point was pressed by Shri Mehta. We, therefore, do not find any merit in this Appeal which is liable to be dismissed.

The Appeal is dismissed with no order as to costs.

sd/-

( D. C. Srivastava, J. )

Date : June 27, 2000 sd/-

( H. K. Rathod, J. )

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